

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Excise Appeal No.839 of 2011

(On behalf of Appellant)

(Arising out of Order-in-Appeal No.32/Kol-VI/2011 dated 06.07.2011 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Parker Robinson Private Limited

1, Nimak Mahal Road, Kolkata-700043

Appellant

VERSUS

Commissioner of Central Excise, Kolkata VI

180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPEARANCE :

None for the Appellant

Shri P.K.Ghosh, Authorised Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...77173/2023

DATE OF HEARING : 21.09.2023

DATE OF DECISION : 21.09.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is a manufacturer of medicament and during the course of scrutiny, it was found that the appellant has cleared free physician samples and they have not paid the duty on the said samples of medicines on the basis of MRP based value under Section 4A instead of Section 4 of the said Act. Section 4A (2) of the Central Excise Act, 1944, as amended, provides, *inter alia*, that excisable goods in respect of which the retail sale price is required to be declared on the package as per the provisions of the standards of Weights and Measures Act, 1976 or the Rules made thereunder and

Excise Appeal No.839 of 2011

the goods are specified by the Central Government by any Notification is chargeable to Central Excise duty with reference to value which shall be deemed to be the retail sale price declared on such goods less the admissible abatement. Free samples of medicines are assessable under Section 4 of the Central Excise Act, 1944 as amended read with Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and also should be equal to such goods sold by the appellant for delivery of any other nearest to the time of the removal of goods under assessment.

2.1 On determination of value of the medicines cleared as samples in the above manner, it was found that the appellant has short paid duty, which were recoverable from the appellant.

2.2 Accordingly, the impugned proceedings were initiated against the appellant and the demand was confirmed.

3. Today, when the matter was called, none appeared on behalf of the appellant.

4. After hearing the Id.A.R. for the Revenue, we find that the said issue has already been settled by this Tribunal in the case of Medispray Laboratories Private Limited Vs. Commissioner of Central Excise, Goa reported in 2017 (5) GSTL 300 (Tri-Mumbai), wherein it has been held that the physician samples are not sold by affixing MRP on them, the same has to be distributed free of cost by the assessee, in that circumstances, the duty is payable on transaction value.

5. In view of the above, we hold that the appellant has correctly paid the duty on physician samples on transaction value and the appellant is

Excise Appeal No.839 of 2011

not liable to pay duty as demanded. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court)

sd
(Ashok Jindal)
Member (Judicial)

Sd/-

(K.Anpazhakan)
Member (Technical)

mm